

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH JOHN RHULE,

Defendant.

NO. CR20-105 JCC

UNITED STATES' RESPONSE IN
OPPOSITION TO DEFENDANT'S
SECOND MOTION TO REOPEN
DETENTION HEARING UNDER 18
U.S.C. § 3142 DUE TO CHANGE IN
MATERIAL FACTS

As the Court stated in its last order reaffirming detention, the “Defendant’s detention has been the subject of extensive litigation.” Dkt. 96 at 1. Since he was ordered detained, the Defendant has filed three motions seeking his release. Dkt. 61, 88, 102. In lengthy opinions, the Court has denied each of the Defendant’s prior motions and should do the same with his current motion. Dkt. 75, 96. As this Court correctly found, in its orders issued on October 8, 2020, and again on January 7, 2021, the Defendant poses a considerable flight risk. Specifically, the Court determined that: (1) the Defendant faces a significant sentence if convicted; (2) the evidence establishing the Defendant’s guilt is considerable; (3) the Defendant has a compelling motive to flee with his wife to Russia, where she currently resides, having been voluntarily deported; (4) the Defendant has access to substantial assets, including cryptocurrency holdings; (5) the

1 Defendant has engaged in “extensive efforts to conceal his assets and online activities,”
 2 including using false names, addresses, shell companies, and encrypted communications;
 3 and (6) the Defendant promised his wife he would return to Russia with her, shortly after
 4 his property was searched, his son was arrested, his plane was seized, and he was
 5 informed that he was a target of a law enforcement investigation. Dkt. 75 at 8, Dkt. 96 at
 6 2-4, 10-12. None of these facts have changed.

7 In contrast to the Court’s well-reasoned opinions, the only information offered by
 8 the Defendant consists of speculative and unproven assertions—that lab results will show
 9 that the 900 kilograms of bulk marijuana seized from the Defendant’s property is, in fact,
 10 lawful hemp, used to create legal cannabidiol (“CBD”). These purported “new facts”
 11 advanced by the Defendant are both fanciful and inconsistent with the evidence obtained
 12 in this case. First, the Defendant’s purported “new facts” are not supported by the lab
 13 analysis conducted to date. These results have shown that, of the more than 20 kilograms
 14 of seized materials tested to date, only .2 kilograms—approximately 1%—has been
 15 identified as CBD. Additionally, the Defendant’s purported “new facts,” are not
 16 consistent with the voluminous evidence gathered in this case. The Defendant and his
 17 co-conspirators routinely described their products—in accounting records, in Instagram
 18 advertisements, in conversations with customers, and in independent lab reports—as
 19 containing high levels of tetrahydrocannabinol (“THC”). Finally, even if the Defendant
 20 were manufacturing some amount of CBD, this does not mean that he was also not
 21 distributing marijuana products in violation of law—the two are not mutually exclusive.
 22 In sum, the Defendant’s purported “new facts” are neither supported by the evidence nor
 23 do they warrant release.

24 ARGUMENT

25 The only new information proffered by the Defendant amounts to partial lab
 26 results conducted by the government. Despite knowing that almost 950 kilograms of
 27 seized plant material or distillates are still being tested, the Defendant boldly claims that
 28

1 the government can only prove that the Defendant possessed 15 kilograms of marijuana.
 2 Dkt. 102 at 6. Implicit in the Defendant's argument is his current defense in this case—
 3 that he was operating a legal enterprise, distilling hemp into CBD. Notably, the 2018
 4 Farm Bill amended the definition of marijuana to remove hemp from schedule I of the
 5 Controlled Substances Act. 21 U.S.C. § 802(16)(B). It also defined hemp in 7 U.S.C. §
 6 1639o as:

7 [T]he plant *Cannabis sativa* L. and any part of that plant, including the
 8 seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids,
 9 salts, and salts of isomers, whether growing or not, with a delta-9
 10 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry
 weight basis.

11 To fall within this safe harbor, the Defendant now claims that the plant materials
 12 recovered were actually hemp, and the distillates seized were, in reality, CBD containing
 13 less than .3% THC.

14 The government intends to prove its case at trial, demonstrating that the Defendant
 15 knowingly participated in a conspiracy that involved 1,000 kilograms or more of a
 16 mixture and substance containing a detectable amount of marijuana. For the instant
 17 motion, it's sufficient to state that the Defendant's contentions are purely speculative and
 18 have no "material bearing on the issue of whether there are conditions of release that will
 19 reasonably assure the appearance of [the Defendant] as required and the safety of any
 20 other person and the community." 18 U.S.C. § 3142(f).

21 **A. The Defendant's Representations Regarding the Quantity of Marijuana**
 22 **Found Are Inaccurate**

23 The Defendant's contentions that the government only recovered "less than 15
 24 kilograms" of marijuana in this case are inaccurate. Dkt. 102 at 6. As the government
 25 explained to the Court at the detention hearing, on March 10, 2020, law enforcement
 26 searched several properties owned by the Defendant and KENNETH WARREN RHULE,
 27 including a property located in Monroe, Washington, where the Defendant and his co-
 28

conspirators manufactured and distributed marijuana products (hereafter described as the “Monroe Warehouse”). The government also searched the Defendant’s home, along with KENNETH WARREN RHULE’s vehicle and residence.

Inside those locations, the government seized the following evidence and, in March 2020, submitted it to the Drug Enforcement Administration’s lab for testing. The following chart describes the seized materials and the status of the testing:

Ex.	Weight (With Packaging)	Net Weight	Substance	Location	Substance Identified by Lab	Detailed Lab Findings
1	933.6 kg	Testing Ongoing	Plant	Monroe Warehouse	Testing Ongoing	Testing Ongoing
2	30 kg	9.9 kg	Distillate	Monroe Warehouse	THC	Total THC estimated >1% in 24 of 26 units tested. THC confirmed in 26 units tested of 146 units received indicating, to at least a 95% level of confidence, that at least 90% of the units in the population contain the substance.
3	22.8 kg	28.27 g	Distillate	Monroe Warehouse	THC	Total THC estimated >1%.
4	826.9 g	156.5 g	Distillate	Defendant’s Residence	THC	Total THC estimated >1%. Δ9- Tetrahydrocannabinol confirmed in 3 units tested of 3 units received.
5	253.2 g	Testing Ongoing	Plant	Defendant’s Residence	Testing Ongoing	Testing Ongoing
6	188.4 g	14.0 g	Distillate	Defendant’s Residence	THC	Total THC estimated >1%. Δ9- Tetrahydrocannabinol confirmed in 2 units tested of 2 units received.

Ex.	Weight (With Packaging)	Net Weight	Substance	Location	Substance Identified by Lab	Detailed Lab Findings
7	2.4 kg	302.1 g	Distillate	Defendant's Residence	THC	Total THC estimated >1%. Δ9- Tetrahydrocannabinol (THC) confirmed in 9 units tested of 12 units received indicating, to at least a 95% level of confidence, that at least 90% of the units in the population contain the substance(s).
8	3.4 kg	Testing Ongoing	Distillate	Defendant's Residence	Testing Ongoing	Testing Ongoing
9	4.1 kg	Testing Ongoing	Distillate	Defendant's Residence	Testing Ongoing	Testing Ongoing
10	1064.9 g	202.1 g	Distillate	KENNETH WARREN RHULE's Residence	CBD & THC	178.2 grams was determined to be cannabidiol (CBD). 23.9 grams was determined to be THC. Total THC estimated >1%.
11	192.9 g	29.2 g	Distillate	KENNETH WARREN RHULE's Residence	CBD	A composite was formed from 1 unit for testing of 1 unit received. Cannabidiol confirmed in the composite. ¹
12	66.8 g	Testing Ongoing	Distillate	KENNETH WARREN RHULE's Residence	Testing Ongoing	Testing Ongoing
13	7.6 kg	5.638 kg	Plant	KENNETH WARREN RHULE's Residence	Marijuana ² & Inconclusive	4,377 grams determined to be marijuana. 1,261 grams were determined to be "inconclusive" and have been submitted for further testing.

¹ Appended as Exhibit B.

² The term "marijuana" is used by the laboratory to indicate that the plant material has higher than 0.3% THC.

Ex.	Weight (With Packaging)	Net Weight	Substance	Location	Substance Identified by Lab	Detailed Lab Findings
14	6.26 kg	4.142 kg	Plant	KENNETH WARREN RHULE's Vehicle	Marijuana	Marijuana confirmed in 9 units tested of 10 units received indicating, to at least a 95% level of confidence, that at least 90% of the units in the population contain the substance(s). ³

In this case, only 207.4 grams of the tested material has been identified as CBD. In contrast, the majority of the items tested, amounting to over 17 kilograms in weight, have been found to be marijuana or prohibited THC distillates. Additionally, another 944.42 kilograms of plant material, suspected to be marijuana, is awaiting testing. While searching the Monroe Warehouse, agents field tested a portion of the plant material identified as Exhibit 1, which came back presumptively positive for marijuana. Once the formal testing of the remaining exhibits, is complete, the government will produce those results to defense counsel.⁴ At this juncture, the Defendant's claims that these products will be identified as hemp or CBD are mere speculation and conjecture.

B. The Government Charged a Conspiracy

The speculative nature of the Defendant's arguments is sufficient to show that they are not material. However, it also bears repeating that the Defendant has been charged with Conspiracy to Manufacture and Distribute Marijuana and Marijuana Distillates, in violation of 21 U.S.C. § 841(a)(1), 841(b)(1)(A), and 846. As alleged in the indictment, this conspiracy spanned almost six years, beginning in April 2014 and ending with KENNETH WARREN RHULE's arrest in March 2020. Dkt. 31. In proving that the conspiracy involved 1,000 kilograms or more of a mixture and substance containing a

³ Appended as Exhibit A.

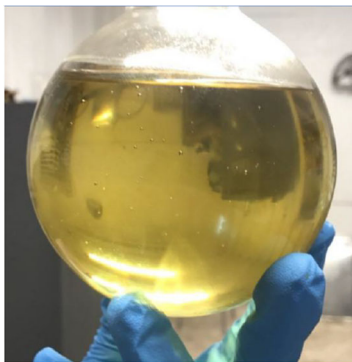
⁴ The government has also invited defense counsel to view the bulk marijuana exhibit and conduct their own independent testing, which they have not yet done.

detectable amount of marijuana, the government is not limited to the evidence seized during the searches conducted on March 10, 2020. Rather, it is entitled to rely upon the extensive evidence it has gathered during this investigation to prove the volume of marijuana distributed during the conspiracy.

This evidence includes the accounting records that the government obtained, which it described to the Court during its oral and written arguments advancing detention. Those records demonstrate that from April 2016 through June 1, 2019, HerbinArtisans sold more than \$2.5 million in products labeled with the term “THC.” For example, the following entries were input under “Sales” in HerbinArtisans’ General Ledger Report on Xero:

11/14/2017	INV	Lucas - Clear Syringe 1mL - 1mL of THC Distillate in a Syringe.	SI-00003692		\$9,199.68
11/14/2017	INV	Samantha Wiejewardana - Clear Syringe 1mL - 1mL of THC Distillate in a Syringe.	SI-00003693		\$4,399.99
11/14/2017	INV	Samantha Wiejewardana - Clear Syringe 1mL - 1mL of THC Distillate in a Syringe.	SI-00003694		\$8,798.72
11/14/2017	INV	unionherbcoop - Clear Syringe 1mL - 1mL of THC Distillate in a Syringe.	SI-00003695		\$3,400.01
11/18/2017	INV	incognito - Clear Pen Top 1mL - 1mL of THC Distillate in an Pen top for vaping.	SI-00003696		\$6,000.00
11/18/2017	INV	Aaron Shaw - Clear Pen Top 1mL - 1mL of THC Distillate in an Pen top for vaping.	SI-00003697		\$375.00
11/20/2017	INV	Lucas - Clear Pen Top 1mL - 1mL of THC Distillate in an Pen top for vaping.	SI-00003700		\$3,000.00
11/20/2017	INV	Marcus Bergkvist - Clear Pen Top 1mL - 1mL of THC Distillate in an Pen top for vaping.	SI-00003701		\$1,500.00
11/20/2017	INV	Erik Witta K - Clear Syringe 1mL - 1mL of THC Distillate in a Syringe.	SI-00003702		\$900.00
11/20/2017	INV	Erik Witta K - Clear Pen Top 1mL - 1mL of THC Distillate in an Pen top for vaping.	SI-00003702		\$650.00
11/20/2017	INV	Christian S - Clear Pen Top 1mL - 1mL of THC Distillate in an Pen top for vaping.	SI-00003703		\$375.00

This evidence also includes HerbinArtisans’ Instagram page, where products were routinely advertised as containing high levels of THC. For example, the following photograph was posted on August 24, 2017, along with the text “#nofilter #herbinartisans #thcdistillate.”




Similarly, on June 1, 2017, the following photograph was posted, along with the text “White Fire OG #indoor #slabs #710 #420 #thc #herbinartisans #bho.” Notably, BHO refers to butane hash oil, a marijuana concentrate.



Additionally, in private messages on Instagram, HerbinArtisans’ representatives described the THC levels in their products, including on November 23, 2017, when HerbinArtisans told a potential customer “Terpenes are a huge factor in how the interacts with your cannabinoids receptors. On occasions our distillate will have 1-3% CBD still with 90%+THC. So the CBD is negligible.”

This high THC level is also evident in the independent lab reports commissioned by HerbinArtisans to test its products. For example, the following lab report was located in KENNETH WARREN RHULE’s Google Drive account.



Confidence Analytics

Cannabis Analytics and Research Specialists
 WSLCB License # 0003 | 14797 NE 95th St, Redmond, WA 98052 | (206) 743-8843 | info@confabla.com
 Certified for: Potency | Foreign Matter | Purity | Residual Solvents | Terpenes
 Research and Development Certificate of Analysis

Sample Demographics			
Producer: Herbin Artisans			
UBI #:		Strain: Distillate Raw	
License #:		Test Date: 06/30/2017	
Original Lot #: 8002BC		Harvest Date: Unknown	
Analytic Sample #: 4061509		Type of Material: Distillation	

Pass/Fail	Chemical Profile																										
Foreign Matter: PASS Stem (>3mm): NA Moisture Analysis: NA Total Ash Content: NE Residual Alkanes: Not Examined Microbiologics NOT EXAMINED	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>THCmax</th> <th>CBDmax</th> <th>THC-A</th> <th>CBD-A</th> </tr> <tr> <td>82.4</td> <td><.01</td> <td>82.4</td> <td><.01</td> </tr> <tr> <td>raw sum: 82.4</td> <td>raw sum: <.01</td> <td></td> <td></td> </tr> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>Primary Terpenes</th> <th>Total Terpene</th> <th>CBG-A</th> <th>CBG</th> <th>CBC</th> <th>CBN</th> </tr> <tr> <td></td> <td></td> <td><.01</td> <td>0.41</td> <td><.01</td> <td>1.85</td> </tr> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">Total Cannabinoid: 84.6</td> </tr> </table> <p style="font-size: x-small; margin-top: 5px;">Cannabinoids (percent by weight) Terpenes (percent by weight)</p>	THCmax	CBDmax	THC-A	CBD-A	82.4	<.01	82.4	<.01	raw sum: 82.4	raw sum: <.01			Primary Terpenes	Total Terpene	CBG-A	CBG	CBC	CBN			<.01	0.41	<.01	1.85	Total Cannabinoid: 84.6	
THCmax	CBDmax	THC-A	CBD-A																								
82.4	<.01	82.4	<.01																								
raw sum: 82.4	raw sum: <.01																										
Primary Terpenes	Total Terpene	CBG-A	CBG	CBC	CBN																						
		<.01	0.41	<.01	1.85																						
Total Cannabinoid: 84.6																											

Terpene Fingerprint

TERPENES NOT EXAMINED

1 The government will not belabor further the myriad ways that it will be able to prove
 2 drug quantity at trial. But the exemplars identified above further demonstrate that the
 3 Defendant's contention—that the government can only prove that the conspiracy
 4 involved 15 kilograms of marijuana—is false.

5 **C. The Court Did Not Rely Upon the Presumption of Detention**

6 Finally, contrary to the Defendant's contentions, the presumption of detention was
 7 not dispositive in this case. Rather, as Judge Coughenour clearly stated in his October 8,
 8 2020 order upholding detention, the Defendant:

9 [P]resented 'some evidence' favorable to him relevant to the § 3142(g)
 10 factors. Thus Mr. Rhule has met his burden of production to rebut the
 11 presumption of detention, but the Court will still weigh the presumption
 12 along with the 3142(g) factors in determining whether Mr. Rhule should be
 released.

13 Dkt. 75 at 5. Accordingly, rather than rely upon the presumption, the Court concluded
 14 that the Defendant submitted sufficient rebuttal evidence, and then went onto consider the
 15 remaining factors enumerated in Section 3142(g). Notably, while the quantity of
 16 marijuana found on the Defendant's property was referenced in the Court's October 8,
 17 2020 opinion, it was only included in a clause of a single sentence. Specifically, the
 18 Court noted:

19 Among other evidence, the Government discovered industrial-grade
 20 marijuana-processing equipment on his property, *nearly 1,000 kilograms of*
 21 *marijuana*, and a laptop open to a dark web vendor page in his bedroom
 22 along with packing materials, shipping labels, and packages containing
 marijuana prepared for shipment.

23 Dkt. 75 at 7 (emphasis added). The remainder of the Court's decision went on—for
 24 pages—describing the other factors establishing the Defendant's flight risk. The fact that
 25 the Court did not find that the presumption of detention was dispositive in this case, and
 26 only referenced the quantity of marijuana briefly in its order, further undermines the
 27 Defendant's argument that his purported "new facts" are material.
 28

1 The Defendant's remaining arguments—related to the Defendant's airplane and a
 2 Coinbase account—deserve no further response. The Defendant already advanced these
 3 arguments, in a nearly verbatim fashion, in his prior motions. And the Court has already
 4 rejected both arguments, finding the “defendant’s claim that he government intentionally
 5 mislead or falsified information in order to detain him is not supported.” Dkt. 96 at 11.
 6 Rather than address the facts at issue in this case, the Defendant continues to rely upon
 7 speculation and incendiary rhetoric.⁵ Neither meet the legal standard needed to reopen
 8 detention and neither warrant a response.

9 **A. The Defendant's Arguments Do Not Undermine the Court's Conclusion**
 10 **that He Must Remain Detained**

11 In its prior comprehensive, thirteen-page and twelve-page decisions, the Court
 12 correctly determined that the Defendant posed a flight risk and must be detained pending
 13 trial. Dkt. 75, 96. In reaching this conclusion, the Court noted a variety of factors, none
 14 of which are challenged in the Defendant's motion. These factors are as follows:

- 15 (1) The weight of the evidence against the Defendant, including the discovery of
 16 an “industrial-grade marijuana-processing equipment on his property,” “a
 17 laptop open to a dark web vendor page in his bedroom along with packing
 18 materials, shipping labels, and packages containing marijuana prepared for
 19 shipment.”
- 20 (2) The Defendant's compelling motivation to remain with his wife of eighteen
 21 years, who has since been deported to Russia, where she remains. The Court
 22 also expressed concern regarding the Defendant's conversation with his wife,
 23 where he promised her that “he would be with her no matter what, and told her
 24 that he was applying for a passport and Russian visa on an expedited basis.”
 25 The Court noted that this conversation took place after the Defendant's
 26 “property had been searched, his son had been arrested, federal agents had
 27 questioned him and seized his plane, and, most significantly, the Government
 28 warned him three days earlier that he would be receiving a target letter.”

⁵ In a lengthy footnote on page 11 of his motion, the Defendant cites to a purported inaccuracy in the PSR regarding the Defendant's social security number. The Defendant somehow ascribes this alleged error to the agents involved in this investigation. However, as the Court knows, PSRs are compiled by Pretrial Services Officers and agents have no role in reviewing or writing those reports.

- (3) The Defendant's substantial assets, including the Defendant's allegations that he "founded two successful technology companies that generated millions of dollars in income," and the evidence that the Defendant's marijuana business "generated over \$2.5 million dollars in 'Net Income' between 2015 and 2015."
- (4) The Defendant's cryptocurrency holdings, including those held at "multiple accounts at several cryptocurrency wallet providers, including those located abroad" and the recognition that the government has seized only "a small fraction of the total bitcoins paid by customers to Mr. Rhule's alleged company and Mr. Rhule has converted at least \$180,000 worth of cryptocurrency into cash and gift cards."
- (5) The Defendant's "extensive efforts to conceal his assets and online activities," including using false names, addresses, and shell companies to anonymize his assets. The Court also noted that the Defendant "regularly used encrypted and anonymous communication services," "allegedly sold his products via the dark web," and used cryptocurrency mixers to conceal the source of his funds.

These factors, along with the others cited in the government's original oppositions (Dkt. 64, 93) compel the conclusion that the Defendant must be detained pending trial in this matter. As the Court has noted, the Defendant "has a particularly compelling motive to flee, the means to live comfortably outside the United States, the skills to avoid detection, *and* the Government has recorded him discussing traveling to Russia just three days after he learned he was a target of the Government's investigation." Dkt. 75 at 12. As a result, "no set of conditions can reasonably assure Mr. Rhule's appearance." *Id.*

CONCLUSION

The Defendant has not established “new” and “material” information that would warrant reopening of bond proceedings. Rather, the Defendant relies upon speculation and conjecture, neither of which satisfy his burden under § 3142 nor provide basis to reconsider the well-reasoned decisions of the Court, ordering that the Defendant be detained pending trial. The Defendant’s motion should be denied.

Dated this 20th day of May, 2021.

Respectfully submitted,

TESSA M. GORMAN
Acting United States Attorney

s/ Marie M. Dalton

MARIE M. DALTON
Assistant United States Attorney
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271
Telephone: (206) 553-7970
Email: Marie.Dalton2@usdoj.gov